

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

OCT - 4 1996

Federal Communications Commission
Office of Secretary

In the Matter of)

Interconnection and Resale Obligations)
Pertaining to Commercial Mobile Radio)
Services)

CC Docket No. 94-54

DOCKET FILE COPY ORIGINAL

COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, the Personal Communications Industry Association ("PCIA")¹ submits these comments in response to the *Second Report and Order and Third Notice of Proposed Rulemaking* in the above captioned proceeding.² PCIA's comments respond to the Commission's request for commenters' views as to whether commercial mobile radio service ("CMRS") licensees subject to "manual" roaming obligations should also be required to provide "automatic" roaming service to other carriers.

PCIA generally supports allowing market forces rather than regulatory requirements to govern the development of wireless services. Consistent with this philosophy, PCIA is not advocating the imposition of an affirmative automatic roaming requirement at this juncture because the record is inconclusive as to whether such a requirement is needed. At the same

¹ PCIA is an international trade association that represents the interests of both the commercial and private mobile radio service industries.

² Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, FCC 96-284, (Aug. 13, 1996) [hereinafter *Second Report and Order and Third Notice*].

No. of Copies rec'd
List A B C D E

024

time, however, new CMRS entrants -- such as broadband PCS providers -- have not had the opportunity to negotiate automatic roaming agreements with incumbent carriers. As a result, the existing record does not allow a reliable assessment of how these operators will fare in attempting to secure nondiscriminatory roaming arrangements with other, more established carriers who have clear incentives to delay or discourage attempts by new entrants to expand their geographic coverage through roaming.

Accordingly, PCIA suggests that the Commission allow additional time for new CMRS providers to become operational and monitor the development of automatic roaming in the CMRS industry before deciding whether rules governing the provision of automatic roaming service between CMRS providers are necessary and in the public interest. PCIA submits that this approach will best balance the competing interests in avoiding the imposition of unnecessary regulatory requirements and in ensuring that automatic roaming capability is made available to new CMRS entrants.

I. BACKGROUND

The *Second Report and Order and Third Notice* represents the latest step in the Commission's ongoing effort to equalize the regulatory requirements applicable to substantially similar mobile service operators.³ In the *Second Report and Order* portion of

³ See, e.g., Interconnection And Resale Obligations Pertaining To Commercial Mobile Radio Services, FCC No. 96-263, (July 12, 1996) (*First Report and Order*); Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1418 (1994).

the proceeding, the Commission extended the cellular "manual" roaming obligation to broadband PCS and select SMR providers.⁴ Carriers subject to this rule must, as a condition of their licenses, provide service to any individual roamer whose handset is technically capable of accessing their network.⁵

In the *Third Notice*, the Commission asked commenters to address whether cellular, broadband PCS, and "covered" SMR operators should also be required to provide "automatic" roaming service to other carriers on a nondiscriminatory basis.⁶ As opposed to "manual" roaming, which requires the subscriber to initiate a relationship with the system on which he or she wants to roam by, for example, providing a valid credit card number, "automatic" roaming enables the roaming subscriber "to originate or terminate a call without taking any action other than turning on his or her telephone"⁷ because a contractual agreement already exists between the subscriber's home system and the roamed-on system. Although the Commission underscored the importance of widespread availability of roaming, it concluded that the record before it was too inconclusive to provide a basis for the adoption of an automatic roaming requirement, and solicited commenters' views as to whether the

⁴ *Second Report and Order and Third Notice*, ¶¶ 12-14.

⁵ *Id.*

⁶ *Id.* ¶ 22.

⁷ *Id.* ¶ 6.

public interest would be served by the adoption of rules governing the provision of automatic roaming service between CMRS operators.⁸

II. THE COMMISSION SHOULD MONITOR THE PROGRESS OF AUTOMATIC ROAMING ARRANGEMENTS IN THE CMRS MARKETPLACE AND, IF NECESSARY, ADOPT AN AUTOMATIC ROAMING OBLIGATION

As an initial matter, PCIA agrees with the Commission's overall conclusion that "roaming capability may be a key competitive consideration in the wireless marketplace, and . . . newer entrants may be at a competitive disadvantage vis-a-vis incumbent wireless carriers if their subscribers have no ability to roam on other networks."⁹ PCIA also agrees that roaming regulation may impose significant costs and burdens on certain classes of CMRS providers, and that any obligations placed on CMRS operators should -- and can -- be narrowly tailored to avoid the imposition of undue burdens.¹⁰

Taking these concepts a step further, PCIA, while preferring automatic roaming, supports the Commission's decision to extend the manual roaming requirement currently applicable to cellular carriers to PCS and certain SMR operators, where technically feasible.¹¹ The Commission's manual roaming requirement will ensure that subscribers with

⁸ *Id.* ¶ 17.

⁹ *Id.* ¶ 11.

¹⁰ *Id.*

¹¹ *Second Report and Order and Third Notice*, ¶ 12. In its Petition for Reconsideration of the CMRS resale rule, PCIA asked the Commission to reconsider and revise the definition of "covered SMR providers" adopted in that proceeding. See Petition for Reconsideration and Clarification of the Personal Communications Industry Association, CC Docket No. 94-54, at

appropriate handsets are able to roam throughout the country regardless of the type of system or frequencies used in their home market. At the same time, the manual roaming obligation formulated by the Commission avoids the imposition of any undue hardship on roamed-upon CMRS operators because it does not require licensees to modify their systems to provide service to any end user; rather, the rule simply requires affected operators to provide manual roaming to subscribers that have a handset technically capable of accessing that operator's system.¹²

As the Commission is aware, the ability to offer manual roaming is crucial to the competitive viability of emerging CMRS operators, whose customers expect and demand to be able to roam without regard to service area boundaries. Manual roaming, however, provides only the minimum roaming capability expected by CMRS subscribers and entails inconvenient and laborious call-completion procedures. For example, manual roaming does not permit a roaming subscriber to receive a call unless the calling party knows what city the

18-22 (filed Aug. 23, 1996). Because the definition of "covered SMR providers" used by the Commission in the CMRS roaming context is identical to the definition adopted in the CMRS resale proceeding, PCIA reiterates its concerns here. As discussed in detail in PCIA's Petition for Reconsideration, PCIA believes that the Commission's existing definition may unintentionally encompass geographic area SMR licensees that choose to offer mainly dispatch services to specialized customers in a non-cellular configuration. These licensees do not have a significant potential to compete directly cellular and broadband PCS. To narrow the definition of "covered SMR providers" more appropriately, PCIA has recommended that the Commission employ a simple mobile count to determine whether an SMR operator is a "covered SMR provider." PCIA is working with its members to determine the proper mobile count to be used and is also reviewing other commenters' recommendations for revision of the definition of "covered" SMRs, and plans to refine its proposal in its reply in the CMRS resale context.

¹² *Second Report and Order and Third Notice*, ¶ 13.

roamer is in and has the roamer access number for that location. Similarly, to place a call, a subscriber with only manual roaming capability must provide a valid credit card number or enter an authorized access code and, even then, has to wait for system validation before the call can go through.¹³ Furthermore, even manual roaming will require requesting carriers to develop software to permit implementation. Some new providers would rather avoid these costs and go directly to the provision of automatic roaming.

In contrast to manual roaming, automatic roaming allows subscribers to place and receive calls outside their service area automatically, without additional dialing, access, or validation requirements.¹⁴ Most cellular carriers have roaming agreements with cellular operators that allow cellular customers to roam on an automatic basis throughout almost all of the country. In addition, cellular providers that offer automatic roaming typically use processes that permit enhanced features, such as call forwarding and call waiting, to follow the roaming subscriber wherever he or she goes. Subscribers have come to expect and demand these capabilities, which means that, to compete effectively with cellular carriers, emerging CMRS operators must be able to offer equally adequate automatic roaming.

As mentioned, although the Commission acknowledged the importance of roaming capability, it declined to impose an automatic roaming requirement because the record before it failed conclusively to demonstrate whether regulatory intervention is needed to facilitate

¹³ See, e.g., Carol Wilson, *Quality is in the Mind of the Customer*, Telephony, Vol. 222, No. 6 (Feb. 10, 1992).

¹⁴ See, e.g., Tim McChesney, *Roaming For An Answer; Services for Travelling Cell Phone Users*, Telephony, Vol. 230, No. 13 (Mar. 25, 1996).

automatic roaming between emerging CMRS carriers and cellular operators.¹⁵ Little has changed to make the record any more informative at this point in time. Only one broadband PCS system has been in operation for a meaningful period of time, and that operator has had little reason to pursue automatic roaming agreements since dual mode phones are not yet available. Thus, the record is still insufficient to permit an informed assessment of how new CMRS operators' requests for automatic roaming will be received by incumbent carriers.

Furthermore, the probative evidence that does exist in the record is contradictory. On the one hand, it is true that in the cellular context, automatic roaming evolved (albeit over a prolonged period of time) as a result of consumer demand without explicit regulatory requirements. Given the level of competition in the broader CMRS marketplace, it is entirely possible that market forces will also suffice to bring about automatic roaming between cellular operators and new CMRS carriers, circumventing the need for inefficient and costly regulatory intervention.

On the other hand, the record provides some basis for concern that established carriers may have an economic incentive to discriminate unreasonably in the provision of automatic roaming to emerging CMRS operators. Automatic roaming did not develop among cellular carriers free of complaints about discriminatory practices.¹⁶ Moreover, the recent

¹⁵ *Second Report and Order and Third Notice*, ¶ 16.

¹⁶ See Information Access Company, *Manual Roaming Requirement Extended to Select SMR Providers*, Land Mobile Radio News, Vol. 50, No. 26 (June 28, 1996) (quoting Chairman Hundt's statement that, "the history of cellular is one in which roaming agreements were denied or priced at exorbitant levels.").

advertising campaign launched by incumbent cellular providers after the introduction of PCS in the Washington/Baltimore market -- which focussed on PCS operators' lack of roaming capability -- is evidence that coverage area will be a competitive factor. This, in turn, may create an economic incentive for incumbent cellular operators to resist providing roaming capability to PCS competitors.¹⁷

In PCIA's view, it is simply too early in the development of new PCS networks for a reliable assessment of whether an automatic roaming rule is needed to ensure that emerging CMRS operators are able to secure automatic roaming capabilities on a reasonable and nondiscriminatory basis. Therefore, to strike an appropriate balance between the interest in avoiding the imposition of unnecessary regulation and the need to ensure that emerging CMRS operators are able to secure timely and economically reasonable automatic roaming arrangements, PCIA suggests that the Commission allow PCS systems additional time to develop and monitor the progress of those operators' attempts to negotiate automatic roaming arrangements before deciding whether regulatory intervention is needed to facilitate automatic CMRS roaming.¹⁸ If at any time it appears that an automatic roaming rule is needed to

¹⁷ See Letter from PCIA to William F. Caton, Acting Secretary, Federal Communications Commission (dated June 5, 1996) (citing Bell Atlantic NYNEX's December 19, 1995, advertisement in the Washington Post, which read: "How [do] Spring Spectrum wireless users make calls outside the greater Washington/Baltimore area[?] Its simple, if they have a quarter. Because once they leave Sprint's very limited service area, their wireless phone can't make a call.")

¹⁸ Other commenters have advocated a similar approach. See, e.g., Letter from Allen Salmasi, Chairman and Chief Executive Officer, NextWave Telecom, Inc., to William F. Caton, Acting Secretary, Federal Communications Commission (dated June 18, 1996) (urging the Commission not to take action at this time to require automatic roaming agreements; instead,

ensure that emerging CMRS operators are able to secure nondiscriminatory roaming arrangements, the Commission should promptly initiate corrective action.¹⁹

III. CONCLUSION

Emerging CMRS operators must be able to provide automatic roaming in order to meet consumer demand for seamless service and compete effectively with incumbent cellular operators. Because new CMRS competitors, such as broadband PCS, have been in operation for a very short period of time, the record is inconclusive as to whether an affirmative regulatory requirement is necessary to ensure that these operators are able to secure automatic roaming capability from more established service providers on a reasonable and nondiscriminatory basis. Similarly, the premature state of the record prevents an informed assessment of the costs and burdens associated with the adoption of an automatic roaming rule. Accordingly, to avoid the imposition of what could be an unnecessary regulatory requirement while at the same time ensuring that the competitive potential of new CMRS operators is not harmed by the denial of their requests for reasonable, nondiscriminatory automatic roaming agreements, PCIA urges the Commission to allow emerging providers

the Commission should refresh the record on the issue of automatic roaming and encourage roaming by requiring cellular and PCS carriers to provide nondiscriminatory access to their networks).

¹⁹ If it appears that corrective action is required, PCIA prefers the imposition of an affirmative automatic roaming obligation over reliance on individual complaint proceedings.

additional time to mature and to monitor the development of automatic roaming arrangements in the CMRS marketplace before deciding whether further regulation is appropriate.

Respectfully submitted,

**PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION**

By: Mark Golden /kk
Mark J. Golden
Vice President -- Industry Affairs
Personal Communications Industry
Association
500 Montgomery Street
Suite 700
Alexandria, Virginia 22314
(703) 739-0300

By: Karen Kincaid
R. Michael Senkowski
Karen A. Kincaid
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorneys

Dated: October 4, 1996